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FILED

Date 6/26/15 By Susan Saylor

8 **BEFORE THE**
9 **STRUCTURAL PEST CONTROL BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Petition to Revoke
12 Probation Against:

Case No. 2012-42.

13 **MITCHELL B. GARCIA**
14 **1584 Blossom Hill Road, #3**
San Jose, CA 95118

PETITION TO REVOKE PROBATION

15 **Applicator License No. RA 53832**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Susan Saylor (Complainant) brings this Petition to Revoke Probation solely in her
20 official capacity as the Registrar/Executive Officer of the Structural Pest Control Board
21 ("Board"), Department of Consumer Affairs.

22 2. On or about November 30, 2012, the Board issued inactive Probationary Applicator's
23 License No. RA 53832 in Branches 2 and 3 to Mitchell B. Garcia (Respondent). The Applicator's
24 License was in full force and effect at all times relevant to the charges brought in this Petition to
25 Revoke Probation and will expire of June 30, 2016

26 3. In a disciplinary action entitled "In the Matter of the Statement of Issues Against
27 Mitchell B. Garcia," Case No. 2012-42, the Structural Pest Control Board issued a Decision and
28 Order effective November 30, 2012, in which Respondent's application for an Applicator License

1 was denied. However, the denial was stayed and Respondent was issued a Probationary
2 Applicator License for three (3) years with certain terms and conditions. A copy of that Decision
3 and Order is attached as exhibit A and is incorporated by reference.

4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Structural Pest Control Board
6 (Board), Department of Consumer Affairs, under the authority of the following laws. All section
7 references are to the Business and Professions Code ("Code") unless otherwise indicated.

8 5. Section 8620 of the Code provides, in pertinent part, that the Board may suspend or
9 revoke a license when it finds that the holder, while a licensee or applicant, has committed any
10 acts or omissions constituting cause for disciplinary action or in lieu of a suspension may assess a
11 civil penalty.

12 6. Section 8625 of the Code states:

13 "The lapsing or suspension of a license or company registration by operation of law or by
14 order or decision of the board or a court of law, or the voluntary surrender of a license or company
15 registration shall not deprive the board of jurisdiction to proceed with any investigation of or
16 action or disciplinary proceeding against such licensee or company, or to render a decision
17 suspending or revoking such license or registration."

18 STATUTORY REGULATORY PROVISIONS

19 7. Section 8641 of the Code states, in pertinent part that failure to comply with the
20 provisions of this chapter, or any rule or regulation adopted by the board is a ground for
21 disciplinary action

22 8. California Code of Regulations, title 16, section 1911, states:

23 "Each operator, field representative and applicator shall file his or her address of record
24 with the board and shall notify the board of any change in address within ten (10) days of such
25 change. The address of record of a field representative, an operator or an applicator shall be the
26 address of the registered company by which he or she is employed or with which he or she is
27 associated or his or her residence address if he or she is not employed and associated.

1 "Each licensee shall also file his or her address for mailing purposes with the board and
2 shall notify the board of any change in address within ten (10) days of such change."

3 9. California Code of Regulations, title 16, section 1937.12, subdivision (a) states, in
4 pertinent part that whenever a proposed decision placed a licensee on probation, the order
5 granting such probation shall include a condition that the licensee file quarterly reports with the
6 board during the period of probation.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Failure to File Quarterly Reports)**

9 10. At all times after the effective date of Respondent's probation, Condition 2 of the
10 Decision and Order stated that Respondent shall file quarterly reports. Grounds exist for revoking
11 the probation and for revocation of Respondent's probation for the following reasons:

12 a. Respondent failed to file quarterly reports that were due May 30, 2014, August 30,
13 2014, November 30, 2014, February 28, 2015, and May 30, 2015.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Failure to Notify Board of Change of Address)**

16 11. At all times after the effective date of Respondent's probation, Condition 1 of the
17 Decision and Order stated that Respondent shall obey all rules and regulations relating to the
18 practice of structural pest control. Grounds exist for revocation of Respondent's probation in that
19 on or about March 23, 2015, correspondence that was sent by the Board to Respondent's address
20 of record was returned "unclaimed," with a new address that had not been previously provided to
21 the Board, in violation of California Code of Regulations, title 16, section 1911.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Failure to Comply with Probation Program)**

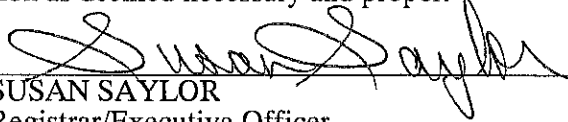
24 12. At all times after the effective date of Respondent's probation, Condition 1 of the
25 Decision and Order stated that shall comply with the Boards probation program. Grounds exist
26 for revocation of Respondent's probation in that Respondent failed to comply with the terms and
27 conditions of his probation as set forth in paragraphs 10 and 11, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Petition to Revoke Probation, and that following the hearing, the Structural Pest Control Board issue a decision:

1. Revoking the probation that was granted by the Structural Pest Control Board in Case No. 2012-42 and imposing the disciplinary order that was stayed thereby revoking inactive Probationary Applicator License No. RA 53832 issued to Mitchell B. Garcia;
2. Revoking or suspending inactive Probationary Applicator License No. RA 53832, issued to Mitchell B. Garcia; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 6/26/15


SUSAN SAYLOR
Registrar/Executive Officer
Structural Pest Control Board
Department of Consumer Affairs
State of California
Complainant

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